

**ZONING BOARD OF APPEALS**  
**MEETING MINUTES**

**August 14, 2012**

**4:00 P.M.**

**CALL TO ORDER:** Mr. John Stetler, Chairperson called meeting to order at 4:00 P.M.

**ATTENDANCE:**

**Members Present:** Greg Dunn                      Carlyle Sims  
Becky Squires                      John Stetler  
James Moreno

**Members Excused:** Deland Davis and Rick Barnes

**Staff Present:** Jill Steele, Deputy City Attorney  
Marcel Stoetzel, City Attorney's Ofc.  
Glenn Perian, Senior Planner  
Leona Parrish, Admin. Assistant, Planning Dept.

**ADDITIONS OR DELETIONS TO THE AGENDA:**

- Note that under New Business the Petition is noted as #Z-01-12 should be #Z-03-12.
- Petitioner for Z-03-12 Mr. & Mrs. Douglas Bagwell has asked to postpone their petition in order to seek legal options.

**CORRESPONDANCE:** (Handed out at today's meeting.)

- Letter from petitioner for #Z-03-12 Mr. & Mrs. Bagwell asking for postponement. (attached)
- Letter from Ms. Sheri Stanalwell stating her support for variance #Z-03-12. (attached)
- Letter of resignation from Mr. Michael Fatt, Zoning Board Member. (attached)

**OLD BUSINESS:** None

*Mr. John Stetler, Chairperson stated the meeting procedures and that everyone present may speak either for or against an appeal. He stated he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision and if denied they may appeal to the Circuit Court.*

**NEW BUSINESS:**

- A) **Appeal #Z-03-12: (12455 Betz Road)** Petition from Douglas & Lori Bagwell, 12455 Betz Road, Battle Creek, MI 49015-8617. Have submitted in writing asking the Zoning Board to postpone their variance request in order to seek legal assistance. (see attached letter)

*Chairperson Mr. John Stetler stated having received the letter from the petitioner he would not call a Public Hearing and would ask to entertain a motion to adjourn this variance request per the petitioner's wishes until a later date.*

**MOTION: MR. CARLYLE SIMS MADE A MOTION TO ADJOURN APPEAL #Z-03-12 PER THE PETITIONERS REQUEST IN ORDER TO ALLOW THEM TO SEEK LEGAL ASSISTANCE REGARDING THEIR REQUEST FOR A VARIANCE TO ALLOW TWO RESIDENTIAL STRUCTURES ON ONE PARCEL; SUPPORTED BY MR. GREG DUNN.**

**MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; ALL IN FAVOR; NONE OPPOSED, MOTION APPROVED.**

**B) Approval of Proposed Amendments to the By-Laws:**

Mr. Glenn Perian, Senior Planner stated he would defer this to Ms. Jill Steele, Deputy City Attorney as there was a question from the last meeting regarding City Commissioners being appointed to the Zoning Board; noted everything else regarding the by-laws would remain the same from the copy provided at the January meeting.

Ms. Jill Steele, Deputy City Attorney introduced Mr. Marcel Stoetzel as a new Assistant City Attorney that was hired as of July 23<sup>rd</sup>, by the City of Battle Creek; said their office is very happy to have him join their staff.

Ms. Steele stated at the last meeting there was a concern of the By-Law changes regarding having a City Commissioner appointed to the ZBA; in Article II, Sec. 1, states one member may be a member of the City Commission and that this body exist as a result of the Charter and City Commission creating the Zoning Board of Appeals. Said the City Commission is the only one having the authority to determine who is going to be on the Zoning Board of Appeals and that the reason this was added is to reflect the change. Said in the past there was certain membership that was required and is still mandatory in a County or Township; but they have changed it today as according to the State Statue (MCL 125.3601) that says for a City or Village, one of the regular members of the Zoning Board of Appeals (may) be a member of the Zoning Commission or Planning Commission; which is meant to reflect that it is not mandatory it's a (may) instead of a (shall) and because it is in the State Statue that a member of the City Commission or Planning Commission may be a member of the Zoning Board of Appeals and that the Zoning Board of Appeals does not have any authority to say they cannot.

Mr. John Stetler asked Ms. Steele if the Enabling Legislation that has made them possible; requires that a Commissioner may be on their board. Ms. Steele stated because there is a concern if it is the best idea to have someone from the City or Planning Commission on the Zoning Board of Appeals; that if they had to include it in the by-laws to allow a City or Planning Commissioner member to be on the Zoning Board of Appeals and her response is that the ZBA have no say in it and that is why it was added as a (may) is because the State Statue used to require a Planning Commission member to be on the ZBA; but is no longer required by Cities and is now a (may) instead of (shall).

Mr. Carlyle Sims stated as being a long term member this was brought up and he recalls they felt at that time it was not necessary for a City Commissioner to be on the ZBA as long as there was one on the Planning Commission. Said it is not a new topic and was addressed in the past and has a question as to why they need it now.

Ms. Steele stated that is a matter of expressing your opinion and reasoning to the City Commission; and they then can do what they would like and can respect it or ignore it because this body does not have the authority to say who can or cannot be a member of the ZBA and by State Statue that decision is left solely to the City Commission.

Mr. Greg Dunn asked if this will bring the by-laws into accordance to what the State Statue say's and he would like to understand more specifically what some of the other members of the ZBA concerns are with having a potential member from the City or Planning Commission serving on this body, especially from Ms. Squires as having been a City Commissioner; he would respect her point of view with having a lot of experience.

Ms. Becky Squires said by allowing a City Commissioner to sit on this board; it would politicize the process; meaning the ability to run for office and make promises and try to influence this board to do things because of political payback. She asked that the record state her dislike and disagrees in having a City Commissioner sit on this board and does support any changes that legally need to be changed. Stated if all of this is at the discretion of the City Commission; why they are voting on the by-laws and not the City Commission.

Ms. Jill Steele said there are many other things in the by-laws that the City Commission does not have any say on and there are a lot of things traditionally that are in the various by-laws of the various boards and commissions of the city that do not have to be included; because they are already provided for in the ordinance. Said it has been by custom and because there is a section regarding memberships; if it were removed it could cause confusion, but in the large scheme of things the zoning board really does not have any say. Ms. Squires asked why they are voting on it if they have no say, and would not like to see this board influenced by politics.

Mr. Greg Dunn stated in response to what Ms. Squires said; is that during his time being on this board he has tried to make each decision independently of the input from other persons and tried to apply what he understands the zoning ordinance states. Said when he has had a conflict of interest he has excused himself from the vote and as continuing to be on this board his plan is that it is irrelevant to him who serves on this board as his conduct is not going to change regardless of political situation or any other situation and making a decision based on what the ordinance and rules say and will decide the case on the basis of what is there and try and make a good decision for the petitioner and also what is best for the people in this city.

Mr. Carlyle Sims said that his one concern is that this is an appeals board and is totally separate from the City Commission and Planning Commission and are here as an appeals board; that if an applicant comes before this board they do not have to worry about any repercussions from the City Commission or Planning Commission and if denied they may appeal to the Circuit Court.

Mr. John Stetler said he would somewhat concur with Mr. Sims and would express to the Mayor and Commission to not consider appointing a commissioner to this board as it is not a requirement.

Mr. James Moreno said this board has functioned well in the past for approximately 12 years since he has sit on this board and is in agreement with Mr. Chair and approach this to that venue it's self and express their concern that this board functions very well and because the statute says you "may" does not mean you "have to" and would like it to remain the same as in the past.

Ms. Becky Squires stated she had spoken with the current Mayor who is not in disagreement with how she feels; but noted that the Mayor can change from year to year.

Mr. Greg Dunn stated the appeals seem to be fewer and feel that the ones they do receive are good ones; which show that the system is working.

**MOTION WAS MADE BY MR. GREG DUNN TO APPROVE THE BY-LAW CHANGES AS PRESENTD; SUPPORTED BY MR. JAMES MORENO.**

**MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; ALL IN FAVOR; NONE OPPOSED, MOTION APPROVED.**

#### **APPROVAL OF MINUTES:**

**MOTION: WAS MADE BY MS. BECKY SQUIRES TO APPROVE THE JANUARY 10, 2012 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. GREG DUNN.**

**ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED – MINUTES APPROVED.**

#### **COMMENTS BY THE PUBLIC: None**

#### **COMMENTS BY THE MEMBERS / STAFF:**

Mr. John Stetler made note of the resignation letter received from Mr. Mike Fatt and that if any of the board members have a replacement in mind to please inform the Mayor of the possible candidate.

Mr. Greg Dunn said he is in agreement and thinks that if persons have thoughts about a particular individual, philosophy or type of person it is a good idea for the people on this board to take this responsibility seriously and be communicating those desires and thoughts back to the Mayor and City Commissioners.

Mr. Carlyle Sims thanked the staff for the reports and material received for today's meeting.

**ADJOURNMENT:** Ms. Becky Squires made a motion for the meeting to be adjourned; Mr. Greg Dunn second, meeting was adjourned at 4:22 P.M.

Submitted by: Leona A. Parrish  
Administrative Assistant, Planning Department



resignation from Mike Fatt

Mike Fatt

to:

chilton, lparrish

07/18/2012 04:20 PM

Hide Details

From: Mike Fatt <bcnpc9@aol.com>

To: chilton@battlecreekmi.gov, lparrish@battlecreekmi.gov,

Dear Leona,

Confirming our conversation, I am leaving Battle Creek effective 20 July 2012.

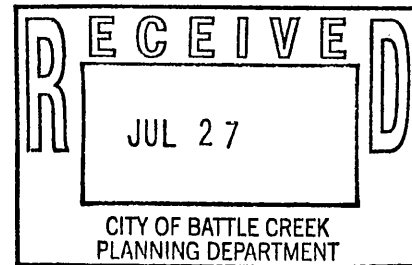
Therefore, I am resigning from the Zoning Board of Appeals and also from NPC 9. I have turned the NPC material over to Harry Zimmerman, the co-chair.

Thank you for your help over the years.

Regards,

Michael Fatt

*Hand-out @ meeting*



City of Battle Creek, Michigan  
Department of Planning and Community Development  
Christine Hilton, AICP  
77 E. Michigan Ave., Ste. 204  
Battle Creek, MI 49017

July 24, 2012

Dear Ms. Hilton:

I am writing in regard to the City Zoning Board of Appeals that is going to be held on Tuesday, August 14, 2012, regarding the property of Douglas and Lori Bagwell, 12455 Betz Road, Battle Creek, Michigan, 49015. My husband and I have been neighbors of Doug and Lori since their marriage and neighbors of Lori, who resided at that residence prior to her marriage when she lived their independently, since our marriage 13 years ago. My husband has been neighbors with Lori prior to our marriage and we wholeheartedly support their effort to obtain a variance.

We want to state that we are wholeheartedly in support of allowing a variance to allow two residential structures to be on one agricultural zoned parcel, commonly known as 12455 Betz Road and Parcels #0083-00-740-0, #083-00-781-0. This will only enhance our neighborhood and be considered a positive addition to our community.

If you have any questions regarding our opinion or would like further information about our reasons for supporting Doug and Lori's request, please feel free to contact me at 269-979-7745.

Thank you for taking the time to consider our opinion.

Sincerely,

Cheri L. Swalwell

Doug A Bagwell

to:

Glenn F Perian

08/13/2012 06:20 PM

Hide Details

From: Doug A Bagwell/BattleCreek

To: Glenn F Perian/BattleCreek@BattleCreek

August 13, 2012

Zoning Board of Appeals

Senior Planner Glenn Perian:

We respectfully request a postponement from our petition for a nonuse variance (Z-03-12) to allow us time to pursue legal options under the County Sanitation Code. We are currently determining whether or not we could be provided an easement for a new septic system from one parcel to another therefore we would not need to combine our parcels to build a new home and not require a variance.

Thank you,

Doug & Lori Bagwell

This e-mail message is for the sole use of the intended recipient(s) and may contain private, confidential, and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please immediately notify the sender by return e-mail and destroy all copies of the message.